



## *Report to the Auburn City Council*

Action Item
Agenda Item No. <b>4</b>
City Manager's Approval

**To:** Mayor and City Council Members  
**From:** Lance E. Lowe, AICP, Associate Planner *LEL*  
**Date:** January 28, 2013  
**Subject:** Second Reading of An Ordinance Amending the Auburn Municipal Code by Adding Chapter 72.31 *et. seq.* to Regulate Mobile Food Vending in the Public Right of Way.

### **The Issue**

Should the City Council Adopt a Second Reading of an Ordinance Amending the Auburn Municipal Code by Adding Chapter 72.31 *et. seq.* to Regulate Mobile Food Vending in the Public Right of Way?

### **Conclusions and Recommendation**

Staff recommends that the City Council take the following actions:

Hold a Second Reading, by Title only, of an Ordinance Amending the Auburn Municipal Code by Adding Chapter 72.31 *et. seq.* to Regulate Mobile Food Vending in the Public Right of Way.

### **Background**

On January 14, 2013, the City Council adopted a first reading of the Mobile Food Vending Ordinance, which based upon health and safety concerns, included the prohibition of Mobile Food Vendors in the Old Town and Downtown Historic Districts and within 1,000 feet from a public or private High School as provided in *Sections 72.031.080 A & B (Exhibit A of Attachment 1 – Adopted Mobile Food Vending in the Public Right of Way Ordinance)*.

Additionally, the City Council directed staff to initiate proceedings to amend the levy of assessments for the Old Town & Downtown BID to include Mobile Food Vendors in the public right of way.

A Second Reading is required to finalize the processing of the ordinance. Should the City Council decide to adopt the Second Reading of the Mobile Food Vending Ordinance on January 28, 2013, the Ordinance will become effective thirty (30) days thereafter.

**Project Description**

The Mobile Food Vender Ordinance (§72.31 *et. seq.*) adds new provisions to the Auburn Municipal Code thereby codifying regulations for Mobile Food Vendors, in the Public Right of Way. As adopted by the City Council, the Mobile Food Vending Ordinance contains the following provisions:

- Mobile food vendors would be prohibited in the Old Town and Downtown Historic District areas due to narrow streets, limited on-street parking, crowded sidewalks and the related safety hazards identified in the Historic Districts as shown in the attached photographs (**Attachment 3**). Allowing mobile food vendors in the Historic District areas of the City would pose an unacceptable threat to public health and safety, and would additionally be detrimental to the density, aesthetic and cultural concerns of the City. Accordingly, Mobile Food Vendors are prohibited pursuant to Section 72.31.080 (A));
- Mobile Food Vendors shall be subject to the City's Old Town & Downtown Business Improvement District (BID) assessments, if conducting business within either district (§ 72.31.050 (B));
- Mobile food vendors are required to provide State Board of Equalization (SBE) documentation prior to issuance of a business license (§ 72.31.050 (C));
- Mobile food vendors may operate at one location up to 1 hour in each 24 hour period (§72.31.070 (B));
- A vending vehicle must park parallel to a public sidewalk. Any window or vehicle element that services customers must be facing the sidewalk (§72.31.070 (C));
- Signage shall be displayed: "Please do not use bathroom of adjacent business unless patronizing business" (§72.31.070 (J));
- Mobile Food Vendors would be prohibited from conducting business within 1,000 feet of a school during the hours of 7:00 a.m. to 4:00 p.m. due to traffic and pedestrian safety concerns from children jaywalking, queue in the street, and otherwise creating safety risks arising from large numbers of school age children congregating during schools hours as shown in the attached photographs (**Attachment 4**). Accordingly, Mobile Food Vendors are prohibited pursuant to Section 72.31.080 (B)); and,
- Exemptions for mobile food vendors are provided for parades, marches, assemblages, film permits and construction sites (§72.31.090 (A - C)).

**Alternatives Available to Council; Implications of Alternatives**

- A. Hold a Second Reading and adopt Ordinance as presented;
- B. Deny the Second Reading; or,
- C. Amend the Ordinance and Introduce and hold a first reading, by title only, as amended.

**Fiscal Impacts**

Additional costs associated with staff time to implement a new Mobile Food Vending Ordinance are anticipated; however, business license fees will partially offset costs incurred with staff's review.

The staff costs incurred for the preparation of the draft ordinance, in consultation with the City Attorney, have been budgeted.

**Additional Information**

Please see the following attachments for more details:

**ATTACHMENTS –**

- 1. Ordinance No. 12-\_\_\_\_\_ with Attached Mobile Food Vending Ordinance
- 2. Adopted City of Auburn Historic Areas Map where Mobile Food Vending is Prohibited
- 3. Old Town and Downtown Photographs
- 4. Placer Union High School Photographs

**EXHIBITS ON FILE WITH THE CITY CLERK AND  
PROVIDED TO CITY COUNCIL PREVIOUSLY UNDER SEPARATE COVER**

**EXHIBITS –**

- A. October 22, 2012 City Council Staff Report with Attachments and Exhibits
- B. November 19, 2012, City Council Staff Report with Attachments & Exhibits
- C. December 3, 2012, City Council Staff Report with Attachments & Exhibits

# ATTACHMENTS



# ATTACHMENT 1

ORDINANCE NO. 12-\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING  
THE AUBURN MUNICIPAL CODE TO REGULATE MOBILE FOOD VENDING IN THE  
PUBLIC RIGHT OF WAY

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

**Section One: Findings.** The City Council of the City of Auburn hereby  
finds:

1. Mobile food vending has the potential to pose special dangers to  
the public health, safety and welfare of residents of the City that are not posed  
by restaurants or food vending from a permanent fixed location.

2. Vending vehicles parked in one location for more than one hour or  
a time in the public right of way exacerbate existing traffic problems in  
congested areas and obstruct sidewalks. There is an additional safety risk for  
pedestrians who may cross public roadways attempting to access the vendors.

3. Mobile food vendors who fail to park their vending vehicle  
correctly during a transaction may attract prospective buyers onto public  
roadways, creating additional traffic and public safety hazards.

4. Narrow streets, limited on-street parking, crowded sidewalks, and  
the related safety hazards identified above are all especially severe in the  
Historic Design Review District. Allowing mobile food vendors in that area of  
the City would pose an unacceptable threat to public health and safety, and  
would additionally be detrimental to the density, aesthetic, and cultural  
concerns of the City.

1       5. With proper regulation, mobile food vendors can provide  
2 additional food choices for Auburn residents and visitors.

3       6. The City has an important and substantial public interest in  
4 providing regulations to prevent safety, traffic, and health hazards, as well as  
5 to preserve the peace, safety, and welfare of the community. Pursuant to  
6 Section 15001 of the California Environmental Quality Act (CEQA) Guidelines  
7 this ordinance is Categorically Exempt from the provisions of CEQA per Section  
8 15311 (Accessory Structures) and Section 15304(e) (Minor Alterations to  
9 Land) of the CEQA Guidelines.

10               **Section Two: Code Amendments.**

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12       1. Chapter 72.31 is hereby added to the Auburn Municipal Code in the  
13 form attached hereto as **Exhibit A**.

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15       2. The title of section 72.07 of the Auburn Municipal Code is hereby  
16 amended to read:

17               "§ 72.07 PUSHCARTS AND TRANSPORTATION OF PROPERTY FOR HIRE;  
18 PERMITS."

19  
20       3. Section 72.07 paragraph (A) of the Auburn Municipal Code is hereby  
21 amended to read:

22               "(A) No person shall stand or park on any street any vehicle, wagon or  
23 pushcart from which goods, wares, or other merchandise are sold,  
24 displayed, solicited, offered for sale, bartered or exchanged, except  
25 that the vehicles, wagons or pushcarts may stand or park only at  
26 the request of a bona fide purchaser for a period of time not to  
27 exceed 10 minutes at any one location and then only after have  
28 secured a permit from the Traffic Engineer.

1 (1) The provisions of this section shall not apply to mobile food  
2 vendors or vending vehicles regulated by chapter 72.31 of this  
3 Code.

4  
5 (2) The provisions of this section shall not apply to persons  
6 delivering the articles upon the order of, or by agreement with  
7 a customer from a store or other fixed place or business or  
8 distribution.

9 (B) No person shall stand or park on any sidewalk any vehicle, wagon  
10 or pushcart from which goods, wares, or other merchandise are  
11 sold, displayed, solicited, offered for sale, bartered or exchanged,  
12 for vending operations of any kind."

13  
14 **Section Three: Effective Date.** This Ordinance shall take effect thirty  
15 days following its adoption as provided by Government Code Section 36937.

16 **Section Four: Severability.** Should any provision, section, paragraph  
17 sentence or word of this Ordinance be rendered or declared invalid by an  
18 court of competent jurisdiction or by reason of any preemptive legislation, the  
19 remaining provisions, sections, paragraphs, sentences or words of this  
20 Ordinance shall remain in full force and effect.  
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1 **Section Five: Certification.** The City Clerk shall certify to the passage and  
2 adoption of this Ordinance and shall give notice of its adoption as required by  
3 law.

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5 DATED: January 28, 2013

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Kevin Hanley, Mayor

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10 ATTEST:

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Stephanie L. Snyder, City Clerk

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I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify  
that the foregoing ordinance was duly passed at a regular meeting of the City  
Council of the City of Auburn held on the 28<sup>th</sup> day of January 2013 by the  
following vote on roll call:

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Ayes:

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Noes:

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Absent:

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Stephanie L. Snyder, City Clerk

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**Chapter 72.31****REGULATION OF MOBILE FOOD VENDORS IN THE  
PUBLIC RIGHT OF WAY**

<b>Section 72.31.010</b>	<b>Findings.</b>
<b>Section 72.31.020</b>	<b>Authority.</b>
<b>Section 72.31.030</b>	<b>Definitions.</b>
<b>Section 72.31.040</b>	<b>Reserved.</b>
<b>Section 72.31.050</b>	<b>Business License Required.</b>
<b>Section 72.31.060</b>	<b>Other Permits Required.</b>
<b>Section 72.31.070</b>	<b>Sales from Vending Vehicles.</b>
<b>Section 72.31.080</b>	<b>Locations Where Vending is Prohibited.</b>
<b>Section 72.31.090</b>	<b>Exception.</b>
<b>Section 72.31.100</b>	<b>Severability.</b>

**Section 72.31.010 Findings.**

The City Council finds as follows:

- A. Mobile food vending has the potential to pose special dangers to the public health, safety and welfare of residents of the City that are not posed by restaurants or food vending from a permanent fixed location.
- B. Vending vehicles parked in one location for more than one hour at a time exacerbate existing traffic problems in congested areas and obstruct sidewalks. There is an additional safety risk for pedestrians who may cross public roadways attempting to access the vendors. Mobile food vendors who fail to park their vending vehicles correctly during a transaction may attract prospective buyers onto public roadways, creating additional traffic and public safety hazards.
- C. Narrow streets, limited on-street parking, crowded sidewalks, and the related safety hazards identified above are all especially severe in the Historic District Areas of Auburn as illustrated on a map entitled "Prohibited Mobile Food Vending, Public Right of Way." The map may be amended by resolution of the City Council. Allowing mobile food vendors in those areas of the City would pose an unacceptable threat to public health and safety, and would additionally be detrimental to the density, aesthetic, and cultural concerns of the City as described in Title XV of this Code.
- D. The City has an important and substantial public interest in providing regulations to prevent safety, traffic, and health hazards, as well as to preserve the peace, safety, and welfare of the community.
- E. With proper regulation, mobile food vendors can provide additional food choices for Auburn residents and visitors.

**Section 72.31.020 Authority.**

Section 72.31 is adopted pursuant to the authority granted to the City of Auburn by Section 22455 of the California Vehicle Code, which permits local authorities to regulate the type of vending and the time, place, and manner of vending from vehicles upon the street in order to promote public safety.

See Section 159.176 et. seq. for Mobile Food Vending on private property.

**Section 72.31.030 Definitions.**

For the purposes of this chapter, the following phrases shall have the meaning respectively ascribed to them by this section:

- A. "Food" or "foodstuff" means and refer to any substance as defined by Section 113781 of the California Health and Safety Code, defined as a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum.
- B. "Food preparation" means and refers to packaging, processing, assembling, portioning, or any operation that changes the form, flavor, or consistency of food, but does not include trimming of produce, as set forth by Section 113791 of the California Health and Safety Code.
- C. "Mobile food merchant" means and refers to any individual that operates or assists in the operation of a vending vehicle in the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise of foodstuffs from a vending vehicle.
- D. "Mobile food vending" means and refers to the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise, of foodstuffs from any vending vehicle.
- E. "Vending operations" means and refers to the sale, display, solicitation, offer for sale, barter, exchange, gift or otherwise of foodstuffs from a vending vehicle.
- F. "Vending vehicle" means and refers to any self-propelled, motorized device by which any person or property may be propelled or moved upon a highway, excepting a device moved exclusively by human power, or which may be drawn or towed by a self-propelled, motorized vehicle, or used exclusively upon stationary rails or tracks, from which foodstuffs are sold, displayed, solicited or offered for sale, bartered, exchanged, given or otherwise.

**Section 72.31.040 Reserved.**

**Section 72.31.050 Business License Required.**

- A. No person shall engage in mobile food vending or operate a vending vehicle within the corporate limits of the City of Auburn without first having procured a business license from the City of Auburn as stated in Chapter 33 of this Code.
- B. Old Town & Downtown Business Improvement District (BID) Taxes. A mobile

food merchant shall be subject to the City's Old Town & Downtown Business Improvement District (BID) Assessments, if conducting business within either district.

- C. State Board of Equalization (SBE) Documentation. A mobile food vendor shall provide a copy of their resale certificate number demonstrating registration and Use Tax payment (county pool) information received from SBE for their Mobile Food Vendor businesses.

#### **Section 72.31.060 Other Permits Required.**

All vending vehicles shall have displayed in a conspicuous place any permits required by this ordinance, or any other applicable law.

#### **Section 72.31.070 Sales from Vending Vehicles.**

- A. Vending vehicles must be brought to a complete stop and be lawfully parked adjacent to the curb consistent with Vehicle Code 22500 and the provisions of Title VII of this Code prior to initiating vending operations.
- B. A vending vehicle may park in the public right of way in one location for a maximum of one hour in each 24 hour period. It must be moved a minimum distance of 500 feet before it can be parked for vending purposes again.
- C. A vending vehicle must park parallel to a public sidewalk. Any window or vehicle element that serves customers must be facing the sidewalk.
- D. A mobile food vendor shall not serve customers adjacent to a public sidewalk under circumstances where the vendor, his equipment, and his customers obstruct passage of the public sidewalk for all users, including those with mobility disabilities.
- E. No signs may be placed in the sidewalk, street, parking spaces, or public right of way.
- F. Mobile food merchants operating a vending vehicle must provide or have garbage receptacles readily available for immediate use by customers of the vending vehicle.
- G. Mobile food merchants operating a vending vehicle must pick up, remove and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials dispensed from the vending vehicle, and any residue deposited on the street from the operation thereof, and shall otherwise maintain in a clean and debris-free condition the entire area where mobile food vending is occurring.
- H. A vending vehicle must be parked so as to comply with the requirements of Health & Safety Code section 114315.
- I. A vending vehicle shall be fully self contained including, but not limited to: mechanical holding units, gas or electric cooking equipment, water tank and hand sinks.
- J. Mobile food vendors shall display a sign which states: "Please do not use bathroom of adjacent business unless patronizing business."

**Section 72.31.080      Locations Where Vending is Prohibited.**

- A. Mobile food vending may not take place in the Historic District Areas as illustrated on a map entitled "Prohibited Mobile Food Vending, Public Right of Way" maintained by the Community Development Department. The map may be amended by resolution of the City Council.
- B. Sales to Students Adjacent to High School Grounds: It is unlawful for every mobile food merchant, in the City's public right of way to sell or offer for sale, display, solicit, barter, exchange, gift or otherwise, any food and/or beverages to any student, attending any public or private high school within the City, on the street or from other public places within one thousand feet (1,000') of the exterior boundaries of land on which is located adjacent to any public or private high school building within the City between the hours of seven a.m. and four p.m. of any school day.
- C. The above provision shall not apply to any mobile food merchant who has received written consent of the school principal or other authorized school official to park, stop or stand for the purpose of vending when such authorization does not interfere with public vehicle traffic or pose a traffic safety hazard to students. Any such written authorization shall be kept and maintained with the mobile merchant at all times for inspection.

**Section 72.31.090      Exception.**

Any mobile food merchant identified in an application for parades, marches, and assemblages or outdoor festivals, submitted pursuant to Chapter 91 and Chapter 92 respectively of this Code or a Film Permit or any other City sponsored or approved event shall be exempt from the requirements of this Chapter pertaining to mobile food vending, provided that all of the following conditions are met:

- A. The vending vehicle is parked no longer than the duration of the special event to conduct its business; and
- B. The vending vehicle is parked so as to comply with the requirements of Health & Safety Code section 114315.
- C. A City of Auburn Business License has been obtained prior to operation.

**Section 72.31.100      Severability.**

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The City Council of the City of Auburn hereby declares that it would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Section be declared invalid or unenforceable and, to that end, the provisions of this Section are severable.

**Prohibited Private Property**

**Prohibited Right of Way**

**ATTACHMENT**

## Prohibited Right of Way



View of Old Town looking north on Sacramento Street

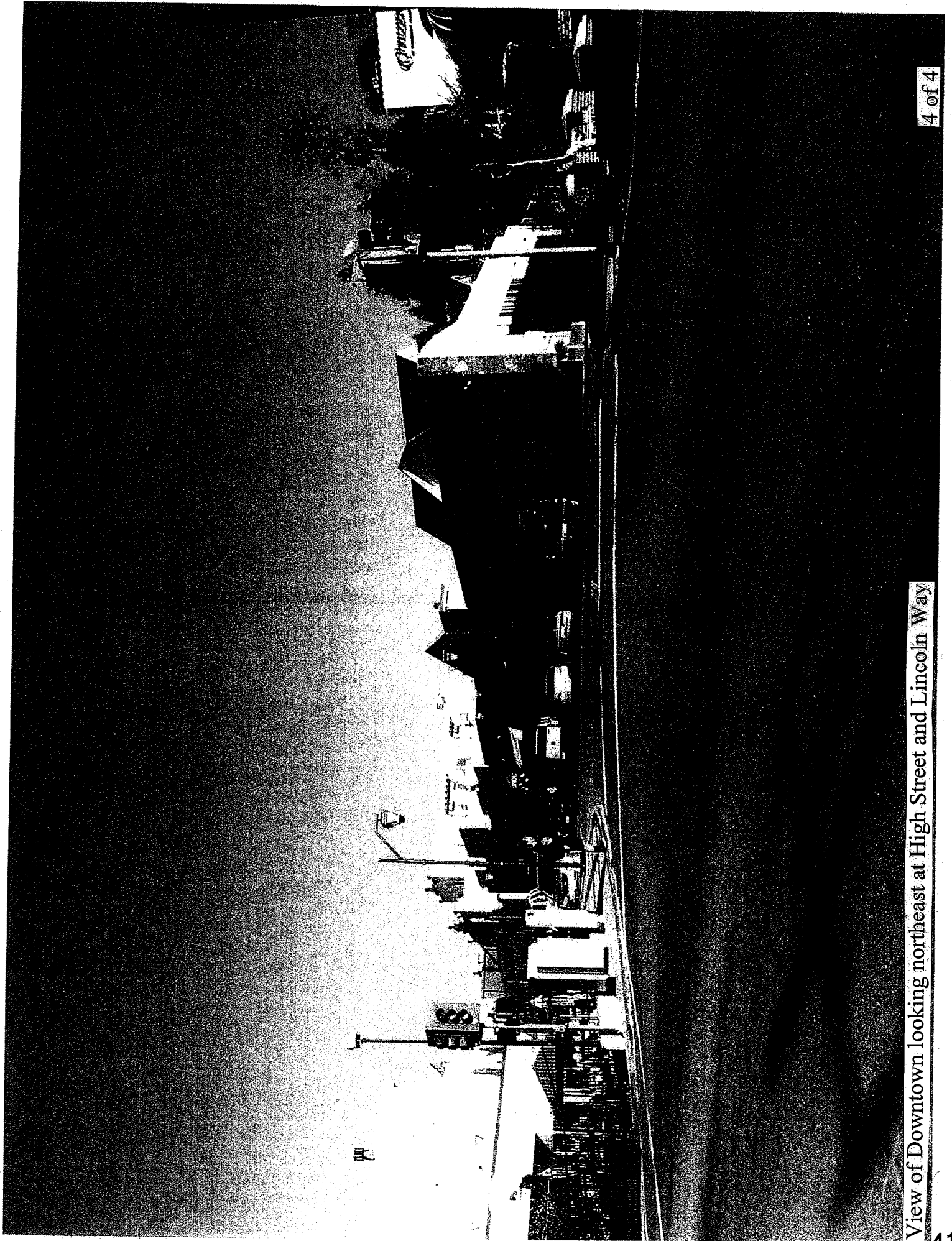


View of Old Town looking east on Commercial Street

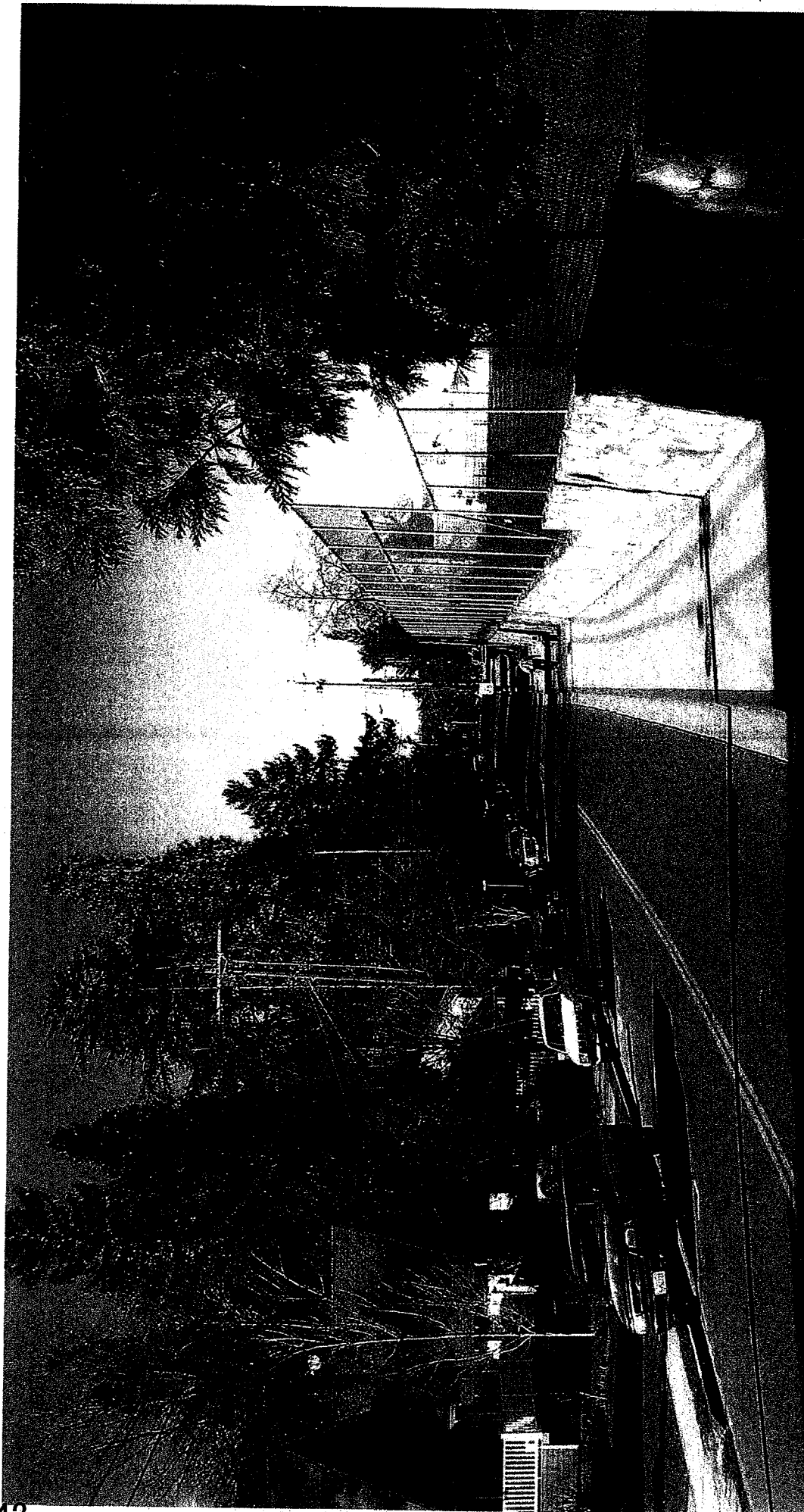


View of Downtown looking north on High Street

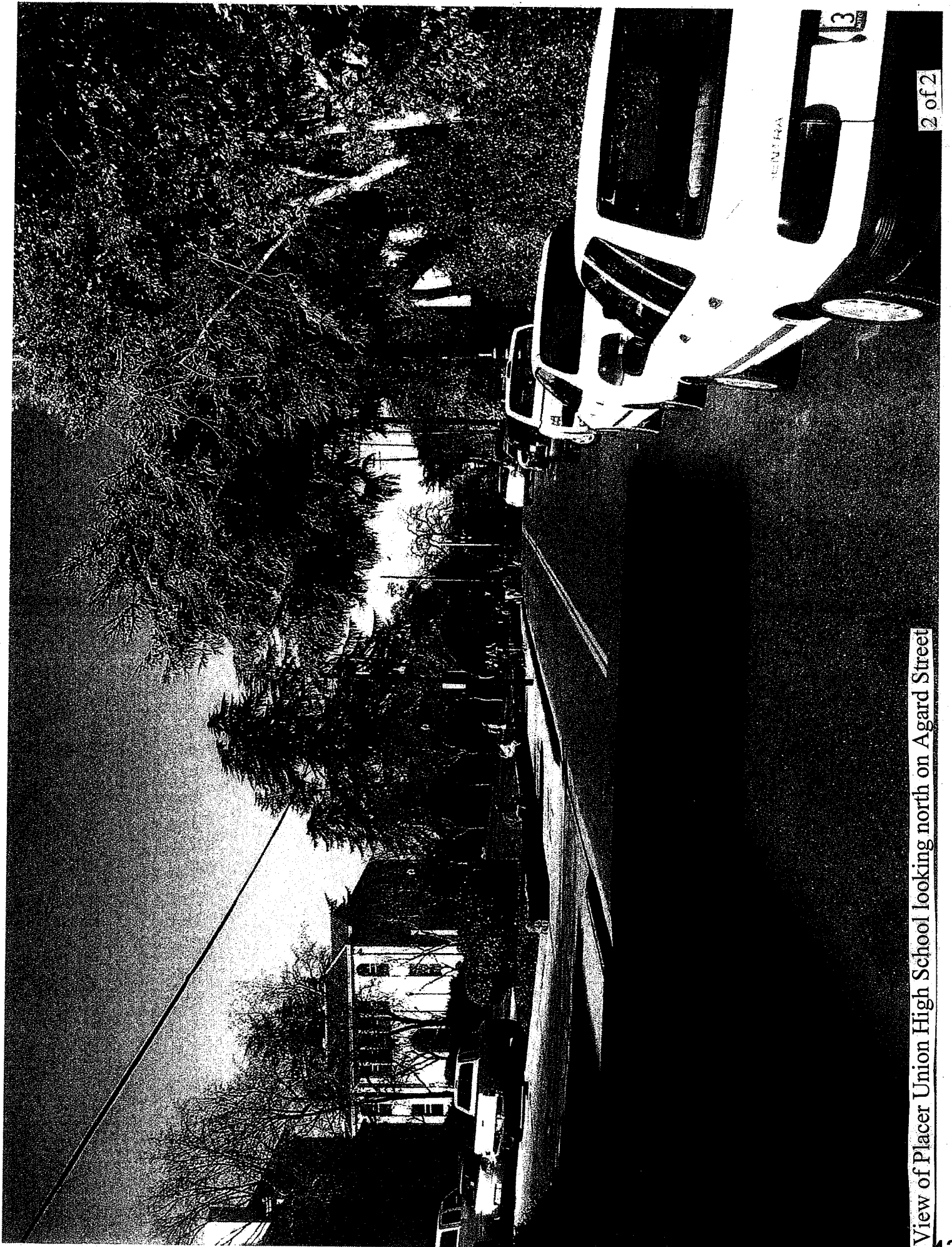




View of Downtown looking northeast at High Street and Lincoln Way



View of Placer Union High School looking north on Agard Street



2 of 2

View of Placer Union High School looking north on Agard Street

# EXHIBITS

EXHIBITS ON FILE WITH  
THE CITY CLERK AND  
PROVIDED TO CITY COUNCIL  
PREVIOUSLY UNDER  
SEPARATE COVER

